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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: DEC 28 2010

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a choreographer. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement and additional evidence. For the reasons discussed below, we uphold the director's basis of denial. Moreover, we withdraw the director's finding that the petitioner is a member of the professions holding an advanced degree. As will be explained below, the petitioner has not established that he has the equivalent of a U.S. Master of Arts degree as stated by the director and, most significantly, he is not a member of the professions. As we further find that the petitioner has not established that he is an alien of exceptional ability, he does not qualify for the classification sought.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A)

that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

I. Advanced Degree Professional

An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

Initially, the petitioner submitted his resume on which he indicated that he graduated in 1987 "with [a] 4 year degree, with second Degree of Specialization." [redacted] the Assistant Director of the Province Cultural Center of Kielce certifies that the petitioner attended a course qualifying him as a Folk Dance Instructor including 600 teaching hours from 1985 through 1987. [redacted] states that the petitioner's coursework "is equivalent to having a specialist secondary education." A certificate from the Ministry of Culture and Art, Cultural Dissemination Methodology Center confirms that the petitioner completed a course in dance in 1987 that entitled the petitioner to apply for a license as an instructor of amateur artistic groups or interest groups.

In response to the director's request for additional evidence, the petitioner submitted a Form ETA 750B listing his degree from the University of Kielce as a "Master's" degree. The petitioner also submitted a transcript from the University of Kielce covering coursework from 1983 through 1987. The final page, according to the translation, references a Master's Thesis and states that the petitioner "earned his Master's Degree in Choreography, teaching specialty." The petitioner also submitted an evaluation of this education from Professor Walter Kennedy of the University of Oregon. Professor Kennedy, however, concludes that the petitioner's academic credential by itself is only equivalent to a U.S. baccalaureate. Professor Kennedy only concludes that the petitioner has the equivalent of a Master of Arts in Dance by combining the petitioner's education and experience.

In light of the above, the petitioner's foreign degree is only equivalent to a U.S. Bachelor of Arts degree. As stated above, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) does provide that a foreign equivalent degree to a U.S. baccalaureate followed by five years of progressive experience is equivalent to an advanced degree. While the petitioner has documented more than five years of post-baccalaureate experience, the letters do not provide a sufficient description of the petitioner's duties such that we can conclude that this work has been progressive.

Regardless, even if we accepted that the petitioner had at least five years of progressive post-baccalaureate experience, the petitioner is not a member of the professions. As defined at section 101(a)(32) of the act, profession "shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The regulation at 8 C.F.R. § 204.5(k)(2) defines "profession" as follows:

> [O]ne of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

We acknowledge that the petitioner previously taught at the [redacted] Polish Supplementary School. The record, however, does not establish that this "school" is an actual school rather than an after-school cultural and recreational program. Regardless, the petitioner seeks to continue working for the Polish American Folk Dance Company. Thus, even if the petitioner previously taught in a school, we still could not classify the petitioner as a professional because he does not seek to continue working as a school teacher. *See Matter of Shah,* 17 I&N Dec. 244, 246-47 (Reg'l. Comm'r. 1977).

As the petitioner does not seek to work as an elementary, secondary, collegiate, academy or seminary teacher, the next issue, pursuant to 8 C.F.R. § 204.5(k)(2), is whether a baccalaureate is the minimum requirement for entry into the occupation. The Department of Labor's Occupational Outlook Handbook (OOH) provides:

> Many colleges and universities award bachelor's or master's degrees in dance, typically through departments of dance, theater, or fine arts. The National Association of Schools of Dance is made up of 74 accredited dance programs. Many programs concentrate on modern dance, but some also offer courses in jazz, culturally specific dance, ballet, or classical techniques. Courses in dance composition, history and criticism, and movement analysis are also available.
>
> A college education is not essential for employment as a professional dancer; however, many dancers obtain degrees in unrelated fields to prepare themselves for careers after dance. The completion of a college program in dance and education is usually essential to qualify to teach dance in college, high school, or elementary school. (See the statement on teachers—postsecondary and teachers—kindergarten, elementary, middle, and secondary elsewhere in the *Handbook.*) Colleges and conservatories sometimes require graduate degrees but may accept performance experience. **A college background is not necessary for teaching dance or choreography in local recreational programs. Studio schools prefer teachers to have experience as performers**.

(Bold emphasis added.) *See* http://www.bls.gov/oco/ocos094.htm#training, accessed on December 17, 2010 and incorporated into the record of proceeding. According to this government source, a baccalaureate degree is not required for teaching dance or choreography in local recreational programs or at studio schools. Thus, the petitioner does not seek to work in the professions.

II. Exceptional Ability

The next issue is whether the petitioner qualifies as an alien of exceptional ability. The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the following six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business:

(A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability

(B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought

(C) A license to practice the profession or certification for a particular profession or occupation

(D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability

(E) Evidence of membership in professional associations

(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations

If a petitioner has submitted the requisite evidence, U. S. Citizenship and Immigration Services (USCIS) determines whether the evidence demonstrates "a degree of expertise significantly above that ordinarily encountered" in the arts. 8 C.F.R. § 204.5(k)(2). *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010), sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. While involving a different classification than the one at issue in this matter, the similarity of the two classifications makes the court's reasoning persuasive to the classification sought in this matter. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See* 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381 F.3d at 145; *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043 (recognizing the AAO's *de novo* authority).

Evidentiary Criteria

An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability

As discussed above, the petitioner's foreign degree is equivalent to a U.S. baccalaureate. While Professor [redacted] concludes that the petitioner has the equivalent of a Master of Arts in Dance, he only reaches this conclusion by combining the petitioner's education and experience.

We acknowledge that the regulation at 8 C.F.R. § 204.5(k)(2) defines an advanced degree as a degree above a baccalaureate or a baccalaureate plus five years of post baccalaureate experience. This definition, however, pertains to members of the professions holding an advanced degree. With respect to aliens of exceptional ability, education and experience are considered separately pursuant to 8 C.F.R. §§ 204.5(k)(3)(ii)(A) and (B). Thus, for purposes of 8 C.F.R. § 204.5(k)(3)(ii)(A), the petitioner has a Bachelor of Arts in dance. That degree is qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(A).

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought

The petitioner claims 25 years of qualifying experience. The petitioner has submitted the following evidence in support of that claim:

1. A full-time professional training instructor at the Complex of Agricultural Schools in Tarnobrzeg from September 1, 1985 to June 30, 1992;

2. A Certificate of Employment as a choreographer instructor at the Dzikowianie Song and Dance Troupe from April 1, 1986 to June 30, 1989;

3. A business registration for a studio bearing the petitioner's name, a private school of dance registered to do business in Tarnobrzeg as of October 4, 1993;

4. A Certificate of Employment for full-time employment as an educator-choreographer at the Occupational Therapy Workshops at the Polish Society for the Mentally Handicapped in Tarnobrzeg from December 1993 through April 30, 1994;

5. A letter from [redacted] certifying that the petitioner was employed at the Zawichost Municipal and Township Cultural Center as a choreographer from May 1, 1994 through June 30, 1998;

6. A letter from [redacted] President of Krakowianki & Gorale, which appears to be affiliated with the [redacted] School although at a different address, confirming the petitioner's employment as a dance instructor from January 2000 through the date of the letter, March 24, 2004;

7. A letter from [redacted] Pastor of [redacted] Church confirming the petitioner's full-time employment as choreographer with the parish and school on a P-3 nonimmigrant visa as of August 15, 2000 through the date of the letter, March 5, 2003;

8. A letter from A. [redacted] Pastor of [redacted] Church as of September 2003 confirming the petitioner's continued employment at the church through the date of the letter, April 10, 2006, but failing to state whether the employment continued full-time;

9. A letter from [redacted] Director and Principal of the [redacted] Polish Supplementary School confirming employment as a dance instructor from September 2000 through the date of the letter, March 12, 2004;

10. An Employment Agreement between the petitioner at the Polish American Folk Dance Company dated February 8, 2007 for employment as a choreographer no less than 35 hours per week; and

11. A July 2009 letter from [redacted] Executive Director of the Polish American Folk Dance Company confirming the petitioner's full-time employment as of October 2005.

The record also contains a June 28, 1985 letter from the Polish Army asserting that while on active duty, the petitioner "qualified in eliminations for the Polish Army Central Artistic Group ballet troupe." A separate letter from the Polish Army Central Artistic Group certifies that the petitioner was employed as a dancer from December 27, 1983 through June 30, 1985. Neither letter suggests that this active-duty experience was full-time work experience as a dance instructor or choreographer.

In light of the above, the petitioner has demonstrated the following employment as a choreographer or dance instructor as of the date of filing, April 14, 2008: (1) from April 1, 1986 through June 30, 1989 (39 months), (2) December 1993 through June 1998 (55 months), (3) January 2000 through March 2004 (51 months) and (4) February 8, 2007 through April 14, 2008 (15 months). This employment totals 160 months, or 13 years and four months.

The regulation at 8 C.F.R. § 204.5(k)(3)(ii)(B), however, requires evidence of at least 10 years of *full-time* experience. Given that the petitioner was working full-time as an instructor at an agricultural school prior to June 1992, it does not appear that any of his choreography experience prior to that date could have been full-time. The only relevant experience the petitioner's employers explicitly confirm as full-time includes his five months of employment at the Polish Society for the Mentally Handicapped; his six months of employment for [redacted] and his 30 months of employment for the Polish American Folk Dance as of the date of filing, April 14, 2008. This full time experience amounts to only 41 months (three years and five months) of qualifying experience.

Thus, the petitioner has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(k)(3)(ii)(B).

A license to practice the profession or certification for a particular profession or occupation

The petitioner submitted December 19, 1985 and January 5, 1988 Dance Qualification Certificates in instructor categories from the Department of Culture and Art, Zofia Czub, M.A. (Province Government in Tarnobrzeg). The petitioner also submitted a January 5, 1988 authorization to practice as an Instructor, Class II. These licenses/certifications meet the plain language of the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(C).

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability

The petitioner submitted his 2007 Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return, Schedule C-EZ, showing $60,000 in income as a choreographer. The petitioner also included evidence of $2,507 in income from the Polish Supplement School of [redacted] Inc. in the same year. Without evidence of the typical income for a choreographer, however, the petitioner cannot demonstrate that this income "demonstrates exceptional ability" as required by the plain language of 8 C.F.R. § 204.5(k)(3)(ii)(D).

Evidence of membership in professional associations

The petitioner did not submit any evidence of membership in professional associations. Significantly, as stated above, the petitioner does not work in a profession. Thus, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(E).

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations

The petitioner submitted a certificate of recognition for participation at the Polish Folk Dance Association of the Americas, Inc. Chicago Festival 2007. A certificate confirming participation at an event is not recognition for achievements and significant contributions to the field. Thus, the petitioner has not submitted qualifying evidence that meets the plain language requirements of 8 C.F.R. § 204.5(k)(3)(ii)(F).

In light of the above, the petitioner has not submitted evidence that qualifies under three of the evidentiary criteria. Nevertheless, we will next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated that the beneficiary has "a degree of expertise significantly above that ordinarily encountered." 8 C.F.R. § 204.5(k)(2). Section 203(b)(2)(C) of the Act provides that the possession of a degree, diploma, certificate or similar award from a college, university school or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of exceptional ability. Thus, in our final merits determination, we must determine whether the beneficiary's degree and license are indicative of or consistent with a degree of expertise significantly above that ordinarily encountered in the arts.

As quoted above, the OOH indicates that the completion of a college program in dance and education is usually essential to qualify to teach dance in college, high school, or elementary school but is not required for teaching at recreational programs or studio schools. *See* http://www.bls.gov/oco/ocos094.htm#training, accessed on December 17, 2010 and incorporated into the record of proceeding.

While the petitioner's education may be more than required to teach at local recreational programs, the petitioner has not established that his degree is indicative of a degree of expertise *significantly* above that ordinarily encountered in the arts, including school teachers. Similarly, the petitioner submitted a Polish Minister of Culture and Arts certificate and a Minister order suggesting that the petitioner's license is akin to certification to teach in Polish schools. The petitioner has not demonstrated that meeting the minimum competency requirements to teach at a Polish school is indicative of or consistent with a degree of expertise significantly above that ordinarily encountered in the arts. Thus, even if we accepted that the petitioner had documented sufficient years of full-time experience, the remaining evidence submitted under 8 C.F.R. § 204.5(k)(3)(ii) is not sufficient to demonstrate that the petitioner qualifies for classification as an alien of exceptional ability.

III. National Interest

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The use of the term "prospective" requires future contributions by the alien, rather than facilitates the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, choreography with a Polish folk influence. The director's request for additional evidence inquired how the proposed benefits of the petitioner's work would be national in scope. In response, the petitioner asserted that the national scope was apparent from his work with the Polish American Folk Dance Company, a "full scale dance group performing on stage at international events, festivals or their own performances for the public." The petitioner asserted that the group was "well known" and performs nationally, traveling beyond New York City "on average every two weeks." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). In support of this assertion, the petitioner claimed to be submitting programs and photographs. Programs carry more weight than self-serving captions on photographs. Regardless, of the performances the petitioner lists in his response to the director's request for additional evidence, only two are outside New York State. These two out of state performances include a Chicago, Illinois festival in 2007 and the 2009 American Institute of Polish Culture's 37th International Polonaise Ball attended by President Lech Walesa in Miami, Florida. The 2009 event postdates the date of filing in this matter, April 14, 2008.

The program for the August 3, 2007 Polish Folk Dance Association of America reflects that the petitioner's group was one of seven dance troupes to perform at that event. In addition, the record contains the program for the American Institute of Polish Culture's 35th International Polonaise Ball in honor of the 400th Year of Jamestown, Virginia. The event took place in Miami, Florida. The program reveals that the Polish American Folk Dance Company was the primary dance entertainment at the event and lists the petitioner as the choreographer for the company. The remaining programs are all for events in New York.

The director concluded that the proposed benefits of the petitioner's work would not be national in scope. On appeal, the petitioner asserts that his work is national in scope in that it is not limited to a small national group or a single project. The petitioner asserts that he develops and promotes music and world dance culture for general American spectators, entertaining and educating. The petitioner reiterates the claim that he has choreographed dance numbers for performances nationwide and asserts that his troupe was invited to the White House. The petitioner notes the letters in the record from a variety of politicians.

The record does not support the assertion that the petitioner's troupe has been invited to the White House. The letter from [redacted] contained in the record contains no such invitation. Significantly, that letter is accompanied by another letter from the White House advising that "Presidential messages" such as the one included in the record may not be used as an endorsement. The letters from politicians appear to be standard responses from the public relations staff of those politicians to requests for such letters. Nothing in the record suggests that these letters are personal endorsements of the events rather than the requested letters of congratulations as a constituent service. While the petitioner also submitted an apostolic blessing from Pope Benedict XVI, the certificate indicates that it is in response to a request for such a blessing. The record does not establish that such certificates of blessing are not routinely issued in response to requests.

NYSDOT, 22 I&N Dec. at 217, n.3 provides the following examples of occupations where the benefits are not national in scope:

> For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. We concur with the director that the impact of a single choreographer for a local cultural dance troupe, even one that occasionally travels to perform, is negligible on the field of dance at the national level.

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

The petitioner has noted that one of his previous employers obtained an alien employment certification for the petitioner in 2001 but that USCIS denied a subsequent Form I-140 petition based on that certification because the employer could not demonstrate its ability to pay the proffered wage. The petitioner asserts that jobs in his field can be short term and part-time and, thus, the alien employment certification process is not applicable. First, the petitioner has submitted a three-year contract for full-time employment with the Polish American Folk Dance Company. Thus, the petitioner has not established that the alien employment certification process is not currently applicable to him. Moreover, the fact that a previous employer obtained such a certification reveals that the process itself is applicable. The fact that this employer was subsequently unable to demonstrate an ability to pay the proffered wage does not demonstrate that the alien employment certification process itself is not applicable to choreographers. Second, the inapplicability or unavailability of an alien employment certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that the alien will serve the national interest to a substantially greater degree than do others in the same field. *Id.* at 218, n. 5.

In response to the director's request for additional evidence, the petitioner asserted that his position requires education and training in national dances and familiarity with national songs, language and general culture of Poland, Slovakia or Ukraine. The petitioner concludes that there is "definitely a demand for persons with such qualifications, but finding an individual with similar qualification on the American job market could be very difficult task." The issue of whether similarly-trained workers are available in the United States, however, is an issue under the jurisdiction of the Department of Labor. *Id.* at 221. More specifically, education and specialized training can be articulated on an application for an alien employment certification. *Id.*

Ultimately, the record lacks evidence that the petitioner has influenced the field of choreography. While the record contains letters from politicians, diplomats and members of cultural societies expressing congratulations or appreciation for the petitioner's work, the record lacks any evidence that other choreographers nationwide have taken notice of the petitioner's work and have been influenced by that work.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.